Supreme Court, U.S.
FILED
JUL 2 1998
OFFICE OF THE CLERK

(3)

No. 97-1733

IN THE
Supreme Court of the United States
OCTOBER TERM, 1997

WILLIAM SPEARS AND JOAN SPEARS,
Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

---

REPLY MEMORANDUM FOR THE PETITIONERS

STUART A. SMITH *
551 Madison Avenue
New York, New York 10022
(212) 759-8285
Attorney for Petitioners
* Counsel of Record

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

3 pp

IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

No. 97-1733

WILLIAM SPEARS AND JOAN SPEARS,
Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

---

REPLY MEMORANDUM FOR THE PETITIONERS

In response to the petition in this case, the government has advanced virtually the same arguments in its Brief in Opposition in *Bennett v. Commissioner*, petition for certiorari pending, No. 97-1717. For the reasons set forth in detail in the Reply Memorandum for the Petitioners in *Bennett*, which we incorporate herein by reference,[1] the petition in this case should be held pending the Court's disposition of the petition in *Bennett*.[2]

---

[1] Pursuant to the usual practice, the petition for a writ of certiorari in *Bennett* has been served upon the Solicitor General.

[2] Apart from the fact that petitioners' adviser Becker did not possess any special qualifications or professional skills in the plastics or recycling industries, the government also argues (Br. in Opp., p. 10) that petitioners could not reasonably have relied on Becker because of his "financial stake" in promoting the investment. In support of this assertion, the government cites the fact that Becker

CONCLUSION

For the reasons stated above, and in the petition for a writ of certiorari, the Court should hold the petition in this case pending its disposition of the petition in *Bennett v. Commissioner*, No. 97-1717.

Respectfully submitted,

STUART A. SMITH *
551 Madison Avenue
New York, New York 10022
(212) 759-8285
Attorney for Petitioners

JULY 1998

* Counsel of Record

---

was the general partner of the partnership in which petitioners invested and thereby earned a fee for performing such service. See Pet. App. 4a. But the record demonstrates beyond question that Becker performed substantial services in exchange for the fees he received to serve as general partner. These services included: (1) oversight of the placement of the machinery (J.A. 1078-1079; 1081-1093); (2) oversight of accounting for the partnership's revenues (J.A. 1109-1110); (3) review and auditing of reports of partnership income (J.A. 1096); (4) preparation of the tax returns (J.A. 1086, 1094, 1095); and (5) undertaking regular communication with the investors (J.A. 1086-1087; 1093-1094). Indeed, Becker organized the general partnership in which petitioners invested simply to be able to monitor the investment and thereby protect the interest of his clients, including petitioners. Furthermore, although Becker was paid the normal commissions by the promoter of the investment opportunity at issue, he rebated these commissions to his clients, including petitioners (J.A. 1043-1045). There is accordingly no basis for the charge that Becker was burdened with a conflict of interest.